



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket No. USCG-2012-0767

RIN 1625-AA00

Safety Zone, Changes to Original Rule; Boston Harbor's Rock Removal Project, Boston Inner Harbor, Boston, MA.

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing three temporary safety zones within Sector Boston's Captain of the Port (COTP) Zone for the drilling, blasting, and dredging operation on the navigable waters of Boston Inner Harbor, in the main ship channel near Castle Island. These temporary safety zones are necessary to enhance navigation, vessel safety, marine environmental protection, and provide for the safety of life on the navigable waters during the drilling, blasting and dredging operations in support of the U.S. Army Corps of Engineers rock removal project. Entering into, transiting through, mooring or anchoring within these safety zones is prohibited unless authorized by the COTP or the designated on-scene representative.

DATES: This rule is effective with actual notice from September 4, 2012, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This rule is effective in the Code of Federal Regulations from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until September 30, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-0767. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" Box and click "SEARCH." Click on Open Docket Folder on the line associated with the rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617-223-4000, e-mail Mark.E.Cutter@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
COTP	Captain of the Port

A. Regulatory History and Information

On August 23, 2012, the Coast Guard published a temporary final rule establishing a safety zone for rock removal operations in Boston Harbor, entitled "Safety Zone; Boston Harbor's Rock Removal Project, Boston Inner Harbor, Boston, MA" (77 FR 50916). This new rule retains the original provisions of that temporary final rule, but adds two additional safety zones necessary for the safety of life at sea.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed

rulemaking (NPRM) with respect to this rule. Publication of an NPRM would be impracticable because critical information regarding the scope of the event was not received from the U.S. Army Corps of Engineers until July 15, 2012, providing insufficient time for the Coast Guard to solicit public comments before the start date of the project. A delay or cancellation of the project in order to accommodate a notice and comment period would be contrary to the public interest because immediate action is necessary to ensure the safety of the personnel involved in the rock removal project and any public vessels in the vicinity of the drilling, dredging and blasting operations being conducted. For the safety concerns noted, it is in the public interest to have these regulations in effect during the rock removal project.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the reasons stated above, any delay in the effective date of this rule would expose personnel involved in the rock removal project and any public vessels in the vicinity to any hazards associated with the drilling, dredging and blasting operations.

B. Basis and Purpose

Starting from August 13, 2012, daily from 5:00 a.m. to 8:00 p.m. until September 30, 2012, the contractor Burnham Associates Inc. has been conducting drilling, blasting and dredging operations in support of the U.S. Army Corps of Engineers Boston Harbors main ship channel rock removal project.

The U.S. Army Corps of Engineers discussed the rock removal project at the Boston's Port Operators Group monthly meeting on July 15, 2012. The Coast Guard hosted a meeting on August 2, 2012 inviting stakeholders from the maritime industry in Boston Harbor to discuss and mitigate any impacts this project will have on maritime community. The feedback from the meeting was that these safety zones will have minimum impact on local mariners based on the location and the fact that the majority of boating traffic will be able to transit around the safety zones and that the vessels involved in the rock removal operations will move as needed for deep draft vessels.

The legal basis for the temporary rule is 33 U.S.C. 1226, 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety zones.

C. Discussion of Final Rule

The COTP Boston has determined that hazards associated with the drilling, dredging and blasting operations pose a significant risk to safety of life on navigable waters. Three safety zones will be established to help ensure the safety of the personnel involved in the rock removal project and any public vessels in the vicinity, and help minimize associated risks with this project. For those reasons, safety zones are being issued to provide for the safety of life on the navigable waters during the drilling, blasting and dredging operations in support of the U.S. Army Corps of Engineers rock removal project.

The first safety zone will be a 100-yard radius around the workboat "MANTIS" while transiting to and from the work site with explosives onboard. The second safety zone will be a 100-yard radius centered on the various worksites while actively engaged in drilling, blasting and dredging operations are on-going. The final safety zone will be a 500-yard radius centered on the worksite on each day of blasting, to be established once explosives are laid and ready for detonation, and subsequently suspended once a successful detonation has been confirmed. These safety zones will be enforced only while the vessel is on scene conducting operations involved in the rock removal project

in Boston Harbor's main ship near Castle Island.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard has determined that this rule is not a significant regulatory action for the following reasons: the Coast Guard expects minimal adverse impact to mariners from the activation of the zones; vessels have sufficient room to transit around the safety zones, with exception given to the final zone, which will stop traffic for short periods of time each day; the vessel conducting the operations will move out of the channel for deep draft vessels that need to pass through that area and vessels may

enter or pass through the affected waterway with the permission of the Captain of the Port (COTP) or the COTP's designated on-scene representative; and notification of these safety zones will be made to mariners through the local Notice to Mariners, Broadcast Notice to Mariners, and by Safety Marine Information Broadcasts in advance of the event.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities for the following reasons: vessels have sufficient room to transit around the safety zone; the vessel conducting the operations will move out of the channel for deep draft vessels that need to pass through that area and vessels may enter or pass through the affected waterway with the permission of the Captain of the Port (COTP) or the COTP's designated on-scene representative; notification of the safety zone will be made to mariners through the Local Notice to Mariners, Broadcast Notice to Mariners, and by Safety Marine Information Broadcasts well in advance of the

event.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) .

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular,

the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "Significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions

that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of three safety zones. This rule is categorically excluded from further review under, paragraph 34(g) of figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Marine Safety, Navigation (water), Reporting and Recordkeeping Requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.T01-0767 to read as follows:

§ 165.T01-0767 Safety Zone; Boston Harbor's Rock Removal Project, Boston Inner Harbor, Boston, MA.

(a) General. Three temporary safety zones are established for the Boston Harbor's Rock Removal Project as follows:

(1) Location. (i) All navigable waters from surface to bottom, within a 100-yard radius around the vessel or vessels conducting drilling, blasting, dredging, and other related operations related to rock removal in Boston's Inner Harbor near Castle Island.

(ii) All navigable waters from surface to bottom, with a 100-yard radius around the vessel "MANTIS" while transporting explosives to and from the work site.

(iii) All navigable waters from surface to bottom, with a 500-yard radius around the blasting site while setting up for blasting, blasting, and in the immediate aftermath.

(2) Definitions. For the purposes of this section, "Designated on-scene representative" is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Boston (COTP) to act on the COTP's behalf. The designated representative may be on an Official Patrol Vessel. An "Official Patrol Vessel" may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or

approved by the COTP or the designated on-scene representative may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(3) Enforcement Period. This rule will be enforced daily from 5:00 a.m. to 8:00 p.m. from September 4, 2012, until September 30, 2012.

(b) Regulations. (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for participating or public vessels, will be allowed to enter into, transit through, or anchor within these safety zones without the permission of the COTP or the designated on-scene representative.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617-223-3201 (Sector Boston command Center) to obtain permission.

Dated: September 4, 2012

J. C. O'Connor III
Captain, U.S. Coast Guard
Captain of the Port Boston

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